

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL P. MITCHELL,

Defendant.

No. 05-CR-50-LRR

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NUMBER ____

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NUMBER ____

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be.

INSTRUCTION NUMBER ____

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NUMBER ____

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors or the attorneys during the jury selection process is not evidence.
3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NUMBER ____

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NUMBER ____

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NUMBER ____

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing that the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

INSTRUCTION NUMBER ____

You have heard testimony that the defendant made statements to certain witnesses in this case. It is for you to decide:

- (1) whether the defendant made the statements and
- (2) if so, how much weight you should give to them.

In making these two decisions, you should consider all of the evidence, including the circumstances under which the statements may have been made.

INSTRUCTION NUMBER ____

You have heard testimony from persons described as experts. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state his or her opinions on matters in that field and may also state the reasons for his or her opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used and all the other evidence in the case.

INSTRUCTION NUMBER ____

You have heard audio recordings of a bankruptcy proceeding. This proceeding was legally recorded, and you may consider the recordings just like any other evidence.

As you have also heard, there are typewritten transcripts of the recordings I have just mentioned. These transcripts also undertake to identify the speakers engaged in the conversation.

You were permitted to have the transcripts for the limited purpose of helping you follow the proceeding as you listened to the recordings, and also to help you keep track of the speakers. The transcripts, however, are not evidence. The recordings themselves are the primary evidence of their own contents.

Differences in meaning between what you hear in the recordings and read in the transcripts may be caused by such things as the inflection in a speaker's voice. You should, therefore, rely on what you hear rather than what you read when there is a difference.

INSTRUCTION NUMBER ____

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdict. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdict, in the same condition as it was received by you.

INSTRUCTION NUMBER ____

The Indictment charges that the defendant committed the crime of making a false declaration in a bankruptcy petition. The defendant has pleaded not guilty to the crime with which he is charged.

As I told you at the beginning of trial, an Indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find a defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged.

There is no burden upon the defendant to prove that he is innocent. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NUMBER _____

The Indictment charges the defendant with making a false declaration in a bankruptcy petition. The defendant may be found guilty of this offense under one or more of the following three theories: knowingly making a false representation in a bankruptcy petition regarding (1) the defendant's ownership interest in Wood Floors Imports, (2) the defendant's total income from January 1, 1999, through about July 11, 2000, or (3) debt payments made by the defendant within ninety days of the filing of his Voluntary Petition.

Theory One:

The Defendant's Ownership Interest in Wood Floors Imports

In order to be found guilty of making a false declaration in his bankruptcy petition under Theory One, the government must prove each of the following elements beyond a reasonable doubt. The crime of making a false declaration in a bankruptcy petition has four essential elements, which are:

- One,* on or about July 11, 2000, a bankruptcy case was pending in the United States Bankruptcy Court for the Northern District of Iowa, in which the defendant was the debtor;
- Two,* the defendant made a false declaration, certificate, verification or statement regarding a matter material to the bankruptcy proceeding by not disclosing his ownership interest in Wood Floors Imports in his Voluntary Petition (Schedule B—"Personal Property");
- Three,* the defendant knew the declaration, certificate, verification or statement was false when it was made; and
- Four,* the defendant did so with the intent to defraud.

If you unanimously find each of these essential elements of this theory of the Indictment have been proved beyond a reasonable doubt, then you must find the defendant

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

guilty of the crime charged under this theory of the Indictment; otherwise you must find the defendant not guilty of the crime charged under this theory.

Theory Two:

The Defendant's Total Income from January 1, 1999, through about July 11, 2000

In order to be found guilty of making a false declaration in his bankruptcy petition under Theory Two, the government must prove each of the following elements beyond a reasonable doubt. The crime of making a false declaration in a bankruptcy petition has four essential elements, which are:

- One,* on or about July 11, 2000, a bankruptcy case was pending in the United States Bankruptcy Court for the Northern District of Iowa, in which the defendant was the debtor;
- Two,* the defendant made a false declaration, certificate, verification or statement regarding a matter material to the bankruptcy proceeding by not disclosing his total income from January 1, 1999, through about July 11, 2000, in his Voluntary Petition (Statement of Financial Affairs, page 1, Question 1—"Income from employment or operation of business and Schedule I");
- Three,* the defendant knew the declaration, certificate, verification or statement was false when it was made; and
- Four,* the defendant did so with the intent to defraud.

If you unanimously find each of these essential elements of this theory of the Indictment have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under this theory of the Indictment; otherwise you must find the defendant not guilty of the crime charged under this theory.

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

***Theory Three:
Debt Payments Made by the Defendant Within
Ninety Days of the Filing of his Voluntary Petition***

In order to be found guilty of making a false declaration in his bankruptcy petition under Theory Three, the government must prove each of the following elements beyond a reasonable doubt. The crime of making a false declaration in a bankruptcy petition has four essential elements, which are:

- One,* on or about July 11, 2000, a bankruptcy case was pending in the United States Bankruptcy Court for the Northern District of Iowa, in which the defendant was the debtor;
- Two,* the defendant made a false declaration, certificate, verification or statement regarding a matter material to the bankruptcy proceeding by not disclosing debt payments made by the defendant within ninety days of the filing of his Voluntary Petition (Statement of Financial Affairs, page 1, Question 3—"Payments to creditors");
- Three,* the defendant knew the declaration, certificate, verification or statement was false when it was made; and
- Four,* the defendant did so with the intent to defraud.

If you unanimously find each of these essential elements of this theory of the Indictment have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under this theory of the Indictment; otherwise you must find the defendant not guilty of the crime charged under this theory.

INSTRUCTION NUMBER _____

The term “debtor” means the person or corporation for whom a bankruptcy case has been commenced.

To act with “intent to defraud” means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss to another, or bringing about a financial gain to oneself or another, to the detriment of a third party.

A matter is “material” if it has a natural tendency to influence, or is capable of influencing, the outcome of the bankruptcy proceeding.

INSTRUCTION NUMBER _____

You will note the Indictment charges that the offense was committed “on or about” a certain date. The government need not prove with certainty the exact date or the exact time period of the offense charged. It is sufficient if the evidence established that an offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NUMBER _____

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NUMBER _____

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have said, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NUMBER _____

An act is done “knowingly” if the defendant is aware of the act and does not act through ignorance, mistake or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider evidence of the defendant’s words, acts or omissions along with all the other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NUMBER _____

One of the issues in this case is whether the defendant acted in good faith. Good faith is a complete defense to the charge of making a false declaration in a bankruptcy proceeding if it is inconsistent with intent to defraud, which is an essential element of the charge.

One who expresses an opinion honestly held by him, or a belief honestly entertained by him, is not chargeable with fraudulent intent even though his opinion is erroneous or his belief is mistaken; and, similarly, evidence which establishes only that a person made a mistake in judgment or an error in management, or was careless, does not establish fraudulent intent.

Evidence that the defendant acted in good faith may be considered by you, together with all the other evidence, in determining whether or not he acted with the intent to defraud.

INSTRUCTION NUMBER _____

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NUMBER _____

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

Finally, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

INSTRUCTION NUMBER _____

Attached to these instructions you will find a Verdict Form. This is simply the written notice of the decision that you reach in this case. The answers to this Verdict Form must be the unanimous decision of the jury.

You will take the Verdict Form to the jury room, and when you have completed your deliberations and each of you has agreed on answers to the Verdict Form, your foreperson will fill out the Verdict Form, sign and date it and advise the Court Security Officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdict as accords with the evidence and these instructions.

DATE

**LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL P. MITCHELL,

Defendant.

No. 05-CR-50-LRR

VERDICT FORM

***Theory One:
The Defendant's Ownership Interest in Wood Floors Imports***

We, the Jury, unanimously find beyond a reasonable doubt the defendant, Daniel P. Mitchell, _____ of the crime charged in the Indictment under Theory One.

Not Guilty / Guilty

Note: If you unanimously find the defendant not guilty of the crime charged in the Indictment under Theory One, have your foreperson write "not guilty" in the above blank space, sign and date this Verdict Form.

If you unanimously and beyond a reasonable doubt find the defendant guilty of the crime charged in the Indictment under Theory One, have your foreperson write "guilty" in the above blank space.

Go on to consider Theory Two.

(CONTINUED)

VERDICT FORM (Cont'd)

Theory Two:

The Defendant's Total Income from January 1, 1999, through about July 11, 2000

We, the Jury, unanimously find beyond a reasonable doubt the defendant, Daniel P. Mitchell, _____ of the crime charged in the Indictment under Theory Two.

Not Guilty / Guilty

Note: If you unanimously find the defendant not guilty of the crime charged in the Indictment under Theory Two, have your foreperson write "not guilty" in the above blank space, sign and date this Verdict Form.

If you unanimously and beyond a reasonable doubt find the defendant guilty of the crime charged in the Indictment under Theory Two, have your foreperson write "guilty" in the above blank space.

Go on to consider Theory Three.

Theory Three:

***Debt Payments Made by the Defendant Within
Ninety Days of the Filing of his Voluntary Petition***

We, the Jury, unanimously find beyond a reasonable doubt the defendant, Daniel P. Mitchell, _____ of the crime charged in the Indictment under Theory Three.

Not Guilty / Guilty

Note: If you unanimously find the defendant not guilty of the crime charged in the Indictment under Theory Three, have your foreperson write "not guilty" in the above blank space, sign and date this Verdict Form.

(CONTINUED)

VERDICT FORM (Cont'd)

If you unanimously and beyond a reasonable doubt find the defendant guilty of the crime charged in the Indictment under Theory Three, have your foreperson write “guilty” in the above blank space and sign and date this Verdict Form.

FOREPERSON

DATE